IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH, NAGPUR.

Central Excise Appeal No. 1/2006

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.

Court's or Judge's Orders

Mrs S.W. Deshpande, Advocate for appellant.

Coram : J.P. Devadhar and
B.P. Dharmadhikari, JJ.

Dated : 20th June 2007

1/ The Commissioner of Central Excise, Nagpur has filed this appeal under Section 35 G (1) of the Central Excise Act, 1944 stating that the following questions of law arise out of the order of the CESTA Tribunal dated 15.4.2005 in Appeal No. E/S/96/05-Mumbai:-

" (1) Whether the CESTAT, WZB,

Mumbai committed an error by not correctly interpreting the provision of Section 35E (2) of the central Excise Act, 1944 and in not giving broader interpretation to the terms "such authority" and consequently negativating the stand of the Department ?

(2) Whether the CESTAT further erred in allowing the "Rectification of Mistake" application without considering the Miscellaneous Application filed by the Department and without hearing the same thereby violating the principles of natural justice ?"

2/ The learned counsel for revenue fairly states that the question raised in the appeal is answered by this Court against the revenue in the case of Commissioner of Central Excise v. Mundra Ply-wood

Private Limited (CE Appeal No. 3 of 2004, decided on 23.4.2007).

3/ In this view of the matter, there is no merit in this appeal. It is accordingly dismissed with no order as to costs.

Judge. Judge.

hsj